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December 2, 2020

VIA ECF

Hon. Douglas E. Arpert, U.S.M.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: *IFMK Realty II, LLC v. Atlantic Property Development, LLC, et al.*
Civil Action No. 3:20-cv-6989-MAS-DEA

Dear Judge Arpert:

We represent IFMK Realty II, LLC (“IFMK”) in the above-referenced action. We write regarding IFMK’s Motion for Default Judgment (the “Motion”) (D.E. No. 15), which is currently pending before Your Honor.¹

As the Court may recall, IFMK brought this action against Defendants Atlantic Property Development, LLC (“Atlantic”), Francis M. Ferrari, and Felix Nihamin, asserting claims for fraud, breach of contract, and breach of fiduciary duty arising out of the parties’ business relationship. In short, IFMK and Defendants formed several LLCs to acquire, develop, and sell beach properties in southern New Jersey. IFMK learned, however, that Defendants had no intention of pursuing that endeavor. Instead, they solicited millions in seed capital from IFMK, used that capital to purchase properties, mortgaged the properties multiple times over for their own financial benefit without informing IFMK and in violation of the LLCs’ operating agreements, and then defaulted on the mortgage payments, exposing the properties to foreclosure and IFMK to millions in lost investments.

Not surprisingly, Atlantic and Ferrari have failed to appear in this action.² On August 3, 2020, the Clerk of Court entered default against them, and on October 6, 2020, IFMK filed the Motion, seeking various relief by way of default judgment.

¹ The parties previously consented to Your Honor conducting any and all proceedings and entering a final order as to IFMK’s Motion. (D.E. No. 17).

² Defendant Felix Nihamin, Atlantic’s General Counsel and Director of Business Development, has appeared in this action; however, on November 19, 2020, Nihamin filed a Suggestion of Bankruptcy, stating that he

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In light of recent developments involving the LLCs, IFMK respectfully seeks to modify the relief it requests in the Motion. Specifically, IFMK seeks to withdraw its request, under Count One of the Complaint, that the Court (i) rescind and declare null and void the Operating Agreements; (ii) impose a constructive trust with respect to the interests held by Atlantic, Ferrari, and Nihamin in the LLCs; and (iii) transfer title to the Properties to IFMK.

As a result, IFMK seeks a default judgment against (i) Atlantic, solely as to liability, with respect to its claims for fraud (Count One), breach of contract (Count Two), breach of fiduciary duty (Count Three), and attorney's fees (Count Four); and (ii) Ferrari, solely as to liability, with respect to its claim for fraud (Count One).

Enclosed please find an amended proposed Order reflecting this modified relief. We have also submitted a copy of the amended proposed Order to Your Honor's Chambers via email, in accordance with Your Honor's Judicial Preferences.

As always, we thank the Court for its attention to this matter, and we look forward to appearing before Your Honor at the upcoming status conference on December 7, 2020.

Respectfully submitted,

/s/ Karl Geercken

Karl Geercken

Enclosure

cc: All Counsel of Record (via ECF)

"filed a voluntary chapter 13 bankruptcy in the United States Bankruptcy Court for the District of New Jersey on April 24, 2019 under case number 19-18309." (D.E. No. 18).